



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,532	12/05/2001	James Michael O'Dwyer	67864/77	1340

7590

03/04/2003

Neal L. Rosenberg, Esq.  
AMSTER, ROTHSTEIN & EBENSTEIN  
90 Park Avenue  
New York, NY 10016

EXAMINER

JOHNSON, STEPHEN

ART UNIT

PAPER NUMBER

3641

DATE MAILED: 03/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/006,532

Applicant(s)

O'DWYER, JAMES MICHAEL

Examiner

Stephen M. Johnson

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 December 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 8,9 and 11-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-16 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7,8,10
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 3641

1. Applicant's election without traverse of species C (illustrated in fig. 5) in Paper No. 11 is acknowledged.

Claims 8-9 and 11-16 are withdrawn from consideration as being directed to non-elected species. Claims 1-7 and 10 read on the elected invention and an action on these claims follows.

2. With regard to the IDS, filed on 2/15/2002, JP 6 194095 has not been considered because a complete copy of this reference was not provided.

3. With regard to applicant's claims of foreign priority, the priority document PCT/AU94/00124 has not been provided.

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The written specification, directed to the fig. 5 embodiment, lacks support for the claim language "propellant charges surround the noses of respective following projectiles externally of the trailing cylindrical extension" (see claim 7); "the trailing cylindrical extension is a thin cylindrical rear extension of the projectile head" (see claim 10); and "an internal wedging surface" (see claim 5).

5. The term "thin" in claim 10 is a relative term which renders the claim indefinite. The term "thin" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The amount of thickness of the cylindrical rear extension is uncertain as described by the term "thin".

Art Unit: 3641

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Tauschek (030).

Tauschek (030) discloses a barrel assembly comprising:

- |                                 |                            |
|---------------------------------|----------------------------|
| a) a barrel,                    | 1, 2                       |
| b) a plurality of projectiles,  | 4                          |
| c) a projectile head,           | adjacent 14                |
| d) cylindrical spacer portion,  | 4 (middle and end portion) |
| e) discrete propellant charges, | inside 17                  |
| f) ignition means,              | 19                         |
| g) control means,               | 22, 23                     |
| h) sealing contact, and         | 15, 16                     |
| i) structural reinforcement.    | 18                         |

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tauschek (993) in view of Tauschek (030).

Art Unit: 3641

Tauschek (993) discloses a barrel assembly comprising:

- |                                   |                 |
|-----------------------------------|-----------------|
| a) a barrel,                      | 13', 13"        |
| b) a plurality of projectiles,    | 4               |
| c) a projectile head,             | see fig. 9      |
| d) cylindrical spacer portion,    | 4f              |
| e) discrete propellant charges,   | 7'              |
| f) non-electrical ignition means, | 8'              |
| g) sealing contact, and           | 4g (see fig. 9) |
| h) structural reinforcement.      | 7"              |

Tauschek (993) applies as recited above. However, undisclosed is an ignition means that is an electrical ignition means and associated control means. Tauschek (030) teaches an ignition means that is an electrical ignition means and associated control means 19, 22, 23. Applicant is substituting one ignition means for another with associated control means in an analogous art setting. It would have been obvious to a person of ordinary skill in this art at the time of this invention to apply the teachings of Tauschek (030) to the Tauschek (993) barrel assembly and have a barrel assembly with a different type of ignition means with associated control means.

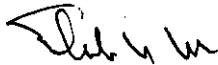
10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lynn, Broyles, and Crouch disclose other state of the art barrel assemblies.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 703-306-4158. The examiner can normally be reached on Tuesday through Friday.

Art Unit: 3641

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3597 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4177.



**STEPHEN M. JOHNSON**  
**PRIMARY EXAMINER**

Stephen M. Johnson  
Primary Examiner  
Art Unit 3641

SMJ  
February 26, 2003